



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00213-CR

DAVID R. HART

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM COUNTY CRIMINAL COURT NO. 1 OF DENTON COUNTY
TRIAL COURT NO. CR-2014-01176-A

MEMORANDUM OPINION¹

Appellant David R. Hart pled guilty to assault against a member of his family or household, and the trial court deferred adjudication of his guilt and placed him on community supervision. He violated terms of the community supervision, so the State filed a motion for the court to revoke the community supervision and to find him guilty, and the court did so. In one issue on appeal,

¹See Tex. R. App. P. 47.4.

appellant contends that his involuntary intoxication caused by taking medication after having back surgery excused his failure to comply with conditions of community supervision and therefore precluded the trial court's ability to adjudicate his guilt. We disagree and affirm the trial court's judgment.

Background Facts

The State charged appellant with assault against a member of his family or household.² He retained counsel and pled nolo contendere as part of a plea-bargain agreement. In accordance with the plea bargain, the trial court deferred adjudication of appellant's guilt and placed him on community supervision for sixteen months. The court imposed several conditions upon the community supervision.

Within the sixteen-month term, the State filed a motion for the trial court to find appellant guilty. The State alleged that he had violated conditions of his community supervision by failing to report to his community supervision officer, by failing to pay a fee, by failing to complete community service at a required number of hours per week, by failing to complete a drug/alcohol evaluation, by failing to begin a batterer's intervention program, and by failing to complete a domestic violence victim-impact panel.

At a hearing on the State's motion, appellant pled true to each alleged violation of his community supervision conditions. A probation department

²See Tex. Penal Code Ann. § 22.01(a)(1), (b)(2) (West Supp. 2016).

supervisor testified that appellant did not complete any condition of his community supervision. Appellant's wife—the victim of his assault—denied that the assault had occurred and said that she and appellant had been “playing around” that night. She also testified that while appellant was on community supervision, he had back surgery and took medication that rendered him delusional, “nearly comatose,” and unable to care for himself. She explained that as of the date of the hearing, appellant was weaning off the medication but that he was planning to have another surgery. The trial court admitted medical records relating to the treatment of appellant's back, including medication that he took.

Appellant's wife testified that he had been in good enough condition to “take care of business” since October 2015, which was seven months before the revocation hearing. She stated that since that time, he had completed eighty hours of community service, had made “all the payments that he needed to make,” and was working to comply with other conditions. The probation department supervisor testified that he had not received any proof that appellant had completed any condition of community supervision.

At the end of the hearing, appellant argued that his violations of community supervision should be excused because of his surgery and because of his condition following the surgery. But the trial court revoked appellant's community supervision, found him guilty of assault against a member of his family or

household, and sentenced him to thirty days' confinement. Appellant brought this appeal.

Involuntary Intoxication

In his only issue, appellant contends that he proved at the revocation hearing that his "failure to comply with the terms and conditions of his community supervision was due to involuntary intoxication" caused by the medication he took for his back pain. Thus, he argues that the trial court abused its discretion and violated his right to due process by revoking his community supervision and by adjudicating his guilt.

We review an order revoking community supervision and adjudicating an appellant's guilt for an abuse of discretion. *Powe v. State*, 436 S.W.3d 91, 93 (Tex. App.—Fort Worth 2014, pet. ref'd). In a revocation hearing, the State must prove by a preponderance of the evidence that the defendant violated at least one term of community supervision. *Id.*; see *Allbright v. State*, 13 S.W.3d 817, 819 (Tex. App.—Fort Worth 2000, pet. ref'd) ("A finding of a single violation of community supervision is sufficient to support revocation.").

A defendant's plea of true to violating community supervision conditions, standing alone, is sufficient to revoke community supervision. See *Perry v. State*, 367 S.W.3d 690, 693 (Tex. App.—Texarkana 2012, no pet.); see also *Simon v. State*, No. 02-15-00045-CR, 2015 WL 6550547, at *1 (Tex. App.—Fort Worth Oct. 29, 2015, no pet.) (mem. op., not designated for publication). The central issue to be determined in reviewing a trial court's exercise of discretion in

a community supervision revocation case is whether the defendant was afforded due process of law. *Leonard v. State*, 385 S.W.3d 570, 577 (Tex. Crim. App. 2012) (op. on reh'g).

The placement of a defendant on community supervision constitutes a contract between the defendant and the trial court. *Dansby v. State*, 448 S.W.3d 441, 447 (Tex. Crim. App. 2014). Community supervision qualifies as a privilege, not a right. *Id.*

Appellant relies on involuntary intoxication to excuse his uncontested violations of community supervision. Although involuntary intoxication may serve as an affirmative defense to violating conditions of community supervision in some circumstances,³ we conclude that the affirmative defense cannot apply here. Involuntary intoxication is a subset of the affirmative defense of insanity under section 8.01 of the penal code. *See Harris v. State*, No. 02-09-00177-CR, 2011 WL 754396, at *4 (Tex. App.—Fort Worth Mar. 3, 2011, no pet.) (mem. op., not designated for publication); *see also* Tex. Penal Code Ann. § 8.01(a) (West 2011). It is an affirmative defense to prosecution that at the time of an alleged offense, the defendant, “as a result of a severe mental defect caused

³The State cites cases that stand for the proposition that some affirmative defenses, like insanity (of which involuntary intoxication is a subset), cannot excuse noncriminal violations of conditions of community supervision. *See Armstrong v. State*, 134 S.W.3d 860, 863–64 (Tex. App.—Texarkana 2004, pet. ref'd) (rejecting an appellant’s argument that because he was “insane and unable to make reasonable decisions, he should not be held responsible for failing to comply with the requirements of community supervision”).

by involuntary intoxication, did not know that his conduct was wrong.” *Mendenhall v. State*, 77 S.W.3d 815, 818 (Tex. Crim. App. 2002); see Tex. Penal Code Ann. § 8.01(a). However, it is not an affirmative defense that “at the time of the alleged offense, the defendant, as a result of a mental defect caused by involuntary intoxication, was incapable of conforming his conduct to the requirements of the law he allegedly violated.” *Mendenhall*, 77 S.W.3d at 818.

Here, appellant does not explicitly contend that because he took medication, he did not know that his failure to comply with community supervision conditions was wrong.⁴ See *id.* Rather, he appears to rely on involuntary intoxication for the prohibited contention that he was incapable of conforming his conduct with the community supervision conditions. See *id.*; *Harris*, 2011 WL 754396, at *4. He argues that his medication rendered him “unable to function” and that the medication made it “impossible for him to comply with the terms of his community supervision.” He relies on the defense to “explain and even excuse his failure to comply with the terms of his community supervision.”

Furthermore, involuntary intoxication “by prescription medicine occurs only when the person has no knowledge that the medicine has possibly intoxicating side effects.” *Woodman v. State*, 491 S.W.3d 424, 429 (Tex. App.—Houston

⁴Appellant’s wife testified that she saw appellant attempt to contact his probation officer for the apparent purpose of explaining why he was not complying with the conditions. The probation department supervisor testified that appellant informed the department that he had missed an appointment “due to back surgery.” These facts establish appellant’s awareness that he was not complying with conditions of his community supervision.

[14th Dist.] 2016, pet. ref'd); *Nelson v. State*, 149 S.W.3d 206, 210 (Tex. App.—Fort Worth 2004, no pet.). Appellant has not directed us to any evidence establishing that he had no knowledge of his medicine's intoxicating effects spanning the large swath of time in which he failed to comply with community supervision conditions, and we have found none.

Further, considering all the testimony that the trial court received, the trial court could have reasonably rejected appellant's surgery and medication as the reasons he had failed to comply with community supervision conditions. Appellant pled true to failing to report to his probation officer during months in which he claimed that his surgery and medication prevented him from doing so, but the evidence shows that appellant failed to maintain contact with the probation department even after his medical condition improved. Next, appellant pled true to failing to complete a drug and alcohol evaluation, but no evidence at the hearing showed that he completed the evaluation after his condition improved. Appellant pled true to failing to complete a batterer's intervention program, but no evidence showed that he completed the program after his condition improved. Finally, the community supervision supervisor testified that appellant had not provided proof of completing any condition, and no evidence indicates that appellant attempted to work together with community supervision officials to mitigate or excuse the several ways in which he had violated conditions. From these facts, the trial court could have reasonably found that appellant would have likely violated his community supervision conditions with or

without his medical challenges. *Cf. Trevino v. State*, No. 08-13-00235-CR, 2015 WL 180390, at *2 (Tex. App.—El Paso Jan. 14, 2015, no pet.) (not designated for publication) (“The trial judge apparently concluded that Trevino had been capable of performing the required community service despite Trevino’s protestations of poor health. It was within the trial judge’s purview to reach this conclusion . . .”).

For all these reasons, we cannot conclude that the trial court abused its discretion by revoking appellant’s community supervision and adjudicating his guilt on the basis that he violated several agreed-upon conditions. *See Powe*, 436 S.W.3d at 93. We overrule his sole issue.

Conclusion

Having overruled appellant’s only issue, we affirm the trial court’s judgment.

/s/ Terrie Livingston

TERRIE LIVINGSTON
CHIEF JUSTICE

PANEL: LIVINGSTON, C.J.; SUDDERTH and KERR, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: June 29, 2017